

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TKLM, Minor.

ROBIN BALLARD,

Petitioner-Appellant,

v

DEPARTMENT OF HUMAN SERVICES,

Respondent-Appellee,

and

TKLM, Minor,

Appellee.

UNPUBLISHED

August 19, 2010

No. 298067

Genesee Probate Court

LC No. 10-016859-AM

Before: WILDER, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Petitioner, Robin Ballard, appeals an order that denied her motion for reconsideration. For the reasons set forth below, we affirm.

Ms. Ballard adopted two of TKLM's siblings and argues that the Department of Human Services (DHS) and the Michigan Children's Institute (MCI)¹ should have notified her of TKLM's birth and should have been considered her for TKLM's placement. TKLM was ultimately adopted by KHF and VF, who had previously adopted TKLM's half sibling, KF. Ms. Ballard now claims that the probate court denied her right to due process when it failed to give her notice and an opportunity to be heard regarding the adoption of TKLM.

¹ MCI is under the control and management of the Michigan Social Welfare Commission, which is in charge of the administration of the powers and duties of the Family Independence Agency. MCL 400.2; MCL 400.202.

“Whether proceedings complied with a party’s right to due process presents a question of constitutional law that we review de novo.” *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise *interested parties* of the pendency of the action and afford them an opportunity to present their objections.” *In re Rood*, 483 Mich at 92, quoting *Dow v Michigan*, 396 Mich 192, 205-206; 240 NW2d 450 (1976) (internal citations omitted; emphasis added).

Ms. Ballard argues that she was entitled to due process in any proceedings regarding the adoption of TKLM because state and federal policies require that an adoptee’s sibling relationships be maintained. “A *natural parent* has a fundamental liberty interest ‘in the care, custody, and management’ of his child that is protected by the Fourteenth Amendment of the United States Constitution, and by article 1, § 17, of the Michigan Constitution” *In Re Rood*, 483 Mich at 91 (emphasis added). Further, as Ms. Ballard asserts, “[a]fter the entry of an order of adoption [t]he person or persons adopting the adoptee then become the parent or parents of the adoptee under the law as though the adopted person had been born to the adopting parents and are liable for all the duties and entitled to all the rights of parents.” MCL 710.60(1). Thus, Ms. Ballard has due process rights in the care and custody of the children she has already adopted, but she cannot point to any law to support her assertion that she has due process rights in adoption proceedings involving children she has not adopted, even if those children share a mother with her children.

Ms. Ballard cites to various regulations, policies, and statutes that require reasonable efforts to keep adopted children with their siblings. Though TKLM was not placed with the siblings adopted by Ms. Ballard, TKLM *was* placed in a home with another sibling, KF, in compliance with the guidelines favoring sibling placements. Again, nothing Ms. Ballard cites supports the notion that her adoption of two older siblings of TKLM creates a liberty interest requiring due process protection.

Ms. Ballard argues that the probate court erred when it denied her motion to file a petition to adopt TKLM.² TKLM’s mother, DM, had her parental rights terminated. As this Court explained in *In re Keast*, 278 Mich App 415, 423; 750 NW2d 643 (2008):

The MCI superintendent represents the state of Michigan as guardian of all children committed to the state by a family court after termination of parental rights. MCL 400.203. The superintendent is authorized to consent to the adoption of any child committed to the MCI as a state ward. MCL 400.209. *Consent by the superintendent to the adoption of a state ward is required before the family court can approve a prospective adoption.* MCL 710.43(1)(b).” [Emphasis added.]

² Application of the Adoption Code, MCL 710.21 *et seq.*, is an issue of statutory interpretation, which is a question of law subject to de novo consideration on appeal. *In re RFF*, 242 Mich App 188, 195; 617 NW2d 745 (2000).

MCL 710.24 sets forth the requirements for filing petitions for adoptions, and provides, in relevant part:

(1) *A court shall not allow the filing of a petition to adopt a child if the consent of a representative or court is required by section 43(1)(b), (c), or (d) of this chapter unless the petition is accompanied by the required consent or a motion as provided in subsection (2).*

(2) If an adoption petitioner has been unable to obtain the consent required by section 43(1)(b), (c), or (d) of this chapter, the petitioner may file a motion with the court alleging that the decision to withhold consent was arbitrary and capricious. A motion under this subsection shall contain information regarding both of the following:

(a) The specific steps taken by the petitioner to obtain the consent required and the results, *if any*.

(b) The specific reasons why the petitioner believes *the decision* to withhold consent was arbitrary and capricious.

(3) If consent has been given to another petitioner and if the child has been placed with that other petitioner according to an order under section 51 of this chapter, a motion under this section shall not be brought after either of the following:

(a) *Fifty-six days following the entry of the order placing the child.*

(b) Entry of an order of adoption. . . . [Emphasis added.]

Ms. Ballard contends that the Adoption Code did not expressly bar her from filing a petition to adopt because TKLM's adoption had not been finalized. She also claims that it was in TKLM's best interest to investigate a placement with her because she already adopted two of his siblings.

As set forth in Ms. Ballard's motion for reconsideration, on January 22, 2010, TKLM was placed for purposes of adoption with KHF and VF who had previously adopted TKLM's half sibling, KF. Ms. Ballard learned of TKLM's placement on March 11, 2010, and, instead of seeking consent from MCI, she immediately asked to file a motion pursuant to MCL 710.45(2) so as to avoid the 56-day time limit, which would have expired on March 19, 2010. As Ms. Ballard concedes on appeal:

realizing that she could not obtain consent to adopt, as it had already been given to someone else, [Ms. Ballard] filed a timely motion for a section 45 hearing. Although she had not officially been denied consent to adopt before MCI gave consent to [KHF and VF], [TKLM's] January placement left [Ms. Ballard] with little time to seek relief under the adoption code, because she found out about TKLM's existence just days prior to the deadline for requesting a hearing under MCL 710.45.

Thus, Ms. Ballard admits that she skipped the initial step of attempting to obtain consent for adoption from MCI, but she maintains that the probate court should nonetheless have allowed her to file a petition to adopt. But MCL 710.45(1) clearly states that the probate court could not allow Ms. Ballard to file her petition to adopt without the necessary consent or a motion alleging that “*the decision to withhold consent was arbitrary and capricious,*” which requires that the petitioner actually attempt to obtain consent. Therefore, the trial court did not err when it denied Ms. Ballard’s motion to file a petition for adoption.

With regard to Ms. Ballard’s argument that it was in TKLM’s best interests to allow her to file an adoption petition, her position is untenable. There is no legal basis to conclude that a best interest analysis is appropriate when a petitioner has failed to follow the terms of the Adoption Code. Furthermore, the authority she cites undermines her position. Again, placing an adoptee with a sibling is given priority and TKLM was placed with a sibling. And, under MCL 710.22(g)(x), if Ms. Ballard could prove a right to adopt TKLM, which, as established above, she cannot, such a right is subordinate to TKLM’s rights to have his adoption completed as soon as possible. Therefore, the trial court did not err in denying Ms. Ballard’s motion to file a petition for adoption.

Finally, we reject Ms. Ballard’s argument that the trial court erred when it denied her motion for a hearing under MCL 710.45. No review hearing was warranted because Ms. Ballard did not seek the MCI superintendent’s consent to adopt TKLM under the statute. Contrary to her assertions on appeal, MCI did not deny her request for consent and it did not make a decision to withhold consent. Accordingly, there was not basis to grant Ms. Ballard hearing under the statute.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad